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8
9 **BEFORE THE**
RESPIRATORY CARE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. R-2033

13 SEAN TRACY BROWN
1137 Timber Wolf Court
14 Bakersfield, California 93306

A C C U S A T I O N

15 Respiratory Care Practitioner License No. 17320

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

20 1. Stephanie Nunez (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Respiratory Care Board of California, Department of
22 Consumer Affairs.

23 2. On or about September 6, 1994, the Respiratory Care Board (Board) issued
24 Respiratory Care Practitioner License Number 17320 to Sean Tracy Brown (Respondent). This
25 license was in full force and effect at all times relevant to the charges brought herein and will
26 expire on September 30, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states:

"The board may order the suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

" . . .

"(f) Negligence in his or her practice as a respiratory care practitioner.

" . . .

"(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

" . . .

"(k) Falsifying, or making grossly incorrect, grossly inconsistent, or unintelligible entries in any patient, hospital, or other record. . . ."

7. Section 3755 of the Code states:

"The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques,

1 and violation of any provision of Section 3750. The board may determine unprofessional
2 conduct involving any and all aspects of respiratory care performed by anyone licensed as
3 a respiratory care practitioner."

4 COST RECOVERY

5 8. Section 3753.5, subdivision (a) of the Code states:

6 "In any order issued in resolution of a disciplinary proceeding before the board, the
7 board or the administrative law judge may direct any practitioner or applicant found to have
8 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
9 investigation and prosecution of the case."

10 9. Section 3753.7 of the Code states:

11 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
12 include attorney general or other prosecuting attorney fees, expert witness fees, and other
13 administrative, filing, and service fees."

14 10. Section 3753.1, subdivision (a) of the Code states:

15 "An administrative disciplinary decision imposing terms of probation may include,
16 among other things, a requirement that the licensee-probationer pay the monetary costs
17 associated with monitoring the probation."

18 FIRST CAUSE FOR DISCIPLINE

19 (Negligence)

20 11. Respondent is subject to disciplinary action under section 3750, subdivision
21 (f), of the Code in that he was negligent in his practice as a respiratory care practitioner. The
22 circumstances are as follows:

23 A. In 2005, respondent was employed as a respiratory care practitioner
24 at Bakersfield Memorial Hospital (BMH). In April 2005, the manager of the Respiratory
25 Therapy Department audited the medical records of twenty-nine patients who were
26 assigned to respondent's care during the night shift on April 21, 22 and 27, 2005.

27 B. The audit reflected a specific pattern in respondent's charting of his
28 patients' heart and respiratory rates. For each patient, respondent charted a difference of

four beats between the heart rate measurement before an aerosol treatment and the heart rate measurement after an aerosol treatment. Also, for each patient there was a difference of four between the respiratory rate measurement before an aerosol treatment and the respiratory rate measurement after an aerosol treatment. For twenty-two of the patients, respondent charted a respiratory rate of 24 before the treatment and a respiratory rate of 28 after the treatment. For each of the other seven patients, he charted a respiratory rate of 20 before the treatment and a respiratory rate of 24 after the treatment. Since actual differential measurements on 29 different patients would be more variable than the four heart beats and four respirations recorded for all of the patients, the records are clearly falsified.

C. When the respiratory manager at BMH asked respondent for an explanation of his charting, he stated he had done a very quick assessment. When the respiratory manager asked him how he calculated the respiratory and heart rates, respondent could not provide an answer. Respondent's employment was terminated on May 5, 2005, for falsification of patient records.

D. Respondent's charting was documented as follows:

<u>Medical Record No.</u>	<u>Date and Time</u>	<u>Pre Heart Rate</u>	<u>Post Heart Rate</u>	<u>Pre Resp. Rate</u>	<u>Post Resp. Rate</u>
13460993	4/22/05 19:35 80	84		24	28
13469465	4/22/05 23:25 80	84		24	28
13451448	4/22/05 19:40 96	100		24	28
	4/22/05 23:30 104	108		24	28
	4/23/05 03:05 92	96		20	24
13462965	4/22/05 19:45 80	84		24	28
	4/23/05 01:05 84	88		24	28
13461447	4/22/05 20:15 92	96		24	28
	4/23/05 03:00 88	92		24	28
13462213	4/22/05 23:35 100	104		24	28
13463450	4/22/05 20:20 96	100		24	28
	4/22/05 23:40 100	104		24	28
	4/23/05 03:10 88	92		24	28
13362041	4/22/05 23:45 88	92		24	28

1	13414115	4/22/05 20:25 92	96	24	28
		4/22/05 23:55 96	100	24	28
2		4/23/05 03:15 100	104	24	28
	13460365	4/21/05 20:20 76	80	24	28
3		4/22/05 03:25 84	88	24	28
4	13455746	4/21/05 19:35 108	112	24	28
		4/21/05 23:15 116	120	24	28
5		4/22/05 03:00 96	100	24	28
6	13386347	4/21/05 23:20 72	76	20	24
7	13454830	4/21/05 23:35 84	88	24	28
8	13398755	4/21/05 19:45 88	92	24	28
		4/21/05 23:55 96	100	24	28
9		4/22/05 03:15 104	108	24	28
10	13459326	4/21/05 19:50 72	76	24	28
11	13468749	4/21/05 19:55 76	80	24	28
		4/22/05 00:00 92	96	24	28
12		4/22/05 03:20 88	92	24	28
13	13471339	4/27/05 20:25 40	44	24	28
		4/28/05 01:10 44	48	24	28
14	134768939	4/27/05 20:35 80	84	24	28
15		4/28/05 00:15 76	80	24	28
		4/28/05 03:30 72	76	24	28
16	13478466	4/27/05 23:00 76	80	24	28
17	13477427	4/27/05 19:30 96	100	24	28
18	13463450	4/27/05 19:35 96	100	24	28
19		4/27/05 23:05 92	96	24	28
		4/28/05 03:00 84	88	20	24
20	13459672	4/27/05 23:10 108	112	24	28
21	13475249	4/27/05 19:40 60	64	24	28
22		4/28/05 01:00 64	68	24	28
23	13472105	4/27/05 19:45 80	84	24	28
		4/27/05 23:15 88	92	24	28
24		4/28/05 03:05 92	96	24	28
25	13475264	4/27/05 23:20 68	72	24	28
26	13483375	4/27/05 23:25 68	72	24	28
27	13439435	4/27/05 19:50 100	104	24	28
		4/27/05 23:30 84	88	20	24
28		4/28/05 03:10 76	80	20	24

13478508	4/27/05 20:05	124	128	24	28
	4/27/05 23:55	128	132	24	28
	4/28/05 03:20	120	124	20	24
13449772	4/27/05 20:10	76	80	24	28
	4/28/05 01:05	72	76	20	24

E. During respondent's care and treatment of his patients, he committed acts of negligence which included, but were not limited to, the following:

(1) Respondent failed to properly assess the patients referred to in subparagraph D above.

(2) As more fully set forth in subparagraph D above, Respondent failed to measure the patients' heart rates and respiratory rates before and after their medicated aerosol treatments as required by BMH policies and procedures.

(3) As more fully set forth in subparagraph D above, Respondent entered false data into the patients' medical records.

(4) Respondent's falsification of the medical records, as more fully set forth in subparagraph D above, placed the health of the patients in jeopardy.

SECOND CAUSE FOR DISCIPLINE

(Commission of Fraudulent, Dishonest, or Corrupt Act)

12. Respondent is subject to disciplinary action under section 3750, subdivision (j), of the Code, in that he committed fraudulent, dishonest, or corrupt acts substantially related to the qualifications, functions, or duties of a respiratory care practitioner. The facts and circumstances set forth in Paragraph 11 of this Accusation are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(False, Grossly Incorrect, Inconsistent or Unintelligible Entries in a Record)

13. Respondent is subject to disciplinary action under section 3750, subdivision (k), of the Code, in that he falsified or made grossly incorrect, inconsistent or unintelligible entries in patient or hospital records. The facts and circumstances set forth in Paragraph 11 of this

1 Accusation are incorporated herein by reference.

2 FOURTH CAUSE FOR DISCIPLINE

3 (Unprofessional Conduct)

4 14. Respondent is subject to disciplinary action under 3755 of the Code in that
5 he engaged in unprofessional conduct in his practice as a respiratory care practitioner. The facts
6 and circumstances set forth in Paragraphs 11 through 13 of this Accusation are incorporated herein
7 by reference.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

11 1. Revoking or suspending Respiratory Care Practitioner License Number
12 17320 issued to Sean Tracy Brown;

13 2. Ordering Sean Tracy Brown to pay the Respiratory Care Board the costs of
14 the investigation and enforcement of this case, and if placed on probation, the costs of probation
15 monitoring;

16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: June 28, 2006

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20 Original signed by Liane Zimmerman for:
21 STEPHANIE NUNEZ
22 Executive Officer
23 Respiratory Care Board of California
24 Department of Consumer Affairs
25 State of California
26 Complainant
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